

## REQUEST FOR CLARIFICATION/INTERPRETATION

TO:	Name and Title: Jannis Conselyea, Program Bureau Chief	FROM:	Name and Title: Dave Sutinen, Quality Assurance Director
	Organizational Unit: DPHHS, DSD, DDP		Organizational Unit: Quality Life Concepts
	Address: PO Box 4210, Helena, MT 59620		Address: PO Box 2506, Great Falls, MT 59403

1. TYPE OF REQUEST: ☐ Follow-up to Verbal Request - Date of Verbal Request: \_\_\_\_\_ . ☒ Written Request

2. STATEMENT OF QUESTION OR ISSUE: We received a Quality Assurance Observation Sheet that cited our misconduct for not following DDP policy. Our response was that to our knowledge no DDP policy was infringed upon or violated. Our regional office replied that our response was unacceptable and brought forward a Policy Memo dated 19 June 2008. The memo was purportedly written by the Director of the Developmental Disabilities Program Jeff Sturm. The memorandum was not issued on State of Montana letterhead, nor was it signed or dated by the author. We question the validity of the document.

**Does a policy memorandum substitute for policy?**

We understand that policy can be found in the Administrative Rules of Montana.

**How are policy memorandum distributed and where might a provider access currently standing memorandum?**

Under the assumption that the policy memorandum stands for policy we have additional questions from the memorandum.

Our legal counsel has asked us to seek clarification on the following statement-

*Staff who are properly trained to provide emergency life saving procedures, such as CPR, or who are certified to assist in medication administration must, if appropriate, immediately proceed with the application of those procedures or assistance in the administration of any necessary medication. The intervention must continue, as appropriate, until emergency medication technicians or qualified medical personnel arrive.*

- We assert that our staff are properly trained to provide emergency life saving procedures. The American Red Cross in their First Aid and Safety publication states, "When citizens respond to an emergency and act as a reasonable and prudent person would under the same conditions, Good Samaritan immunity generally prevails."

It would appear that the guidance provided by the DDP program is contrary to the guidance provided by the American Red Cross. ARC guidelines also allows the trained lay person stopping emergency rescue techniques when the scene becomes unsafe or when the rescuer becomes too exhausted to continue. It is the opinion of QLC legal counsel that if the State of Montana dictates an employee 'must' provide CPR/FA in an emergency, the Good Samaritan act no longer applies.

**Would the liability for an emergency technique misapplied or applied recklessly, or if the rescuer abandons the victim after initiating care be borne by the state or the provider?**

**Would a trained rescuer continue to be covered by the Good Samaritan laws in the event that they are performing techniques that this memorandum states 'must' be performed?**

Referencing 'POLICY MEMO 19 JUNE 2008' it states, "*The service provides should take actions to assure that he staff are properly and sufficiently trained. In addition. the provider, as necessary and appropriate, should implement corrective action that is commensurate with the seriousness of the matter.*"

Quality Life Concepts employs about one hundred sixty direct support professionals who on a daily basis are the

trained lay persons caring for the people we serve. They are not medical professionals. They are asked to make decisions about medical care, whether or not an emergency situation exists, and the action steps to take based upon their surveying the scene.

In every CPR and First Aid training course we have reviewed the '911' memo since that memo was issued by Jeff Sturm. We also have persons attending the course sign off that the memo was read to them. We retain records showing that this occurred.

DDP has lauded us over the superior training that we provide to our direct support professionals. We track the timely completion of training and take appropriate employee action in the event that the training does not occur.

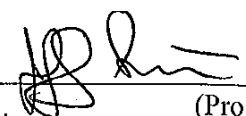
We believe that based upon the guidelines developed by the state of Montana that our staff are properly and sufficiently trained. We are interpreting the statement that corrective action should be taken as disciplinary action toward a staff. We interpret the statement commensurate with the seriousness of the matter to mean that the disciplinary action to be metered to the seriousness of care not given. Please clarify.

**Who is to determine when corrective action is to occur and the severity of that action(is this the provider)?  
How does the State of Montana intend to direct private provider take action when employees experience an inability to perform or implement trained techniques when they mentally shut down involuntarily as a response to the stressor?**

As a private contractor with the state we hold that our personnel policies are our policies. We assert that our personnel files are private documents and cannot be accessed by any entity without our making that request or by legal action. We also assert that the management actions that we take with our employees including promotion, demotion, commendation or disciplinary action are by the action that we take and are not governed by state policy.

**How does the state intend to protect private employer's employees right to confidentiality with regard to any performance action and satisfy DDP's request to determine whether the said action was appropriate.**

3. ANSWER: The urgent care policy is not a memorandum it is an official state policy written by the Department of Public Health and Human Services legal department and yes it must be followed. DDP policy takes precedence over the "Good Samaritan law" for people in our state and federally funded programs. We hold contracted programs to a higher standard because we fund these programs with taxpayer dollars. Our interpretation of the paragraph you cited in our urgent care policy is that if your staff are appropriately trained they must provide life giving support which includes CPR. It is not appropriate to stand by and do nothing to try and save a life if you are trained in basic CPR. If staff are trained and do not respond corrective action is required by policy. The state may request corrective action if the provider fails to do so.

Approved and Issued by:   
Date: 6-17-11 (Program Director)

References:

STATE USE ONLY	4: DISTRIBUTION:		5: FOLLOW-UP:	
	One Copy:	Requestor	<input type="checkbox"/> To be issued as Bulletin to <a href="#">Click here to enter text.</a>	
	One Copy:	Manual Coordinator		(Division Administrator)
	One Copy:	Division Files	Manual. Expected Date of Issuance: <a href="#">Click here to enter text.</a>	
	Additional Copies:		<input type="checkbox"/> A.R.M. Change	<input type="checkbox"/> State Plan Change
	<input type="checkbox"/> to <a href="#">Click here to enter text.</a>			